



December 9, 2002

DEC 09 2002

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CG Docket No. 02-278, CC Docket No. 92-90, FCC 02-250: Rules and Regulations
Implementing the Telephone Consumer Protection Act (TCPA) of 1991

Dear Ms. Dortch:

The National Association of Mortgage Brokers (NAMB) appreciates the opportunity to comment on the referenced proposal (the Proposed Rule), which the Federal Communications Commission (FCC) published on October 8, 2002. This comment letter begins with some background information and follows with comments on the Proposed Rule.

I. Background and General Remarks

NAMB is the nation's largest organization exclusively representing the interest of the mortgage brokerage industry. NAMB has more than 14,000 members and 47 state affiliates nationwide. NAMB provides education, certification, industry representation, and publications for the mortgage broker industry. NAMB members subscribe to a strict code of ethics and a set of best business practices that promote integrity, confidentiality, and above all, the highest levels of professional service to the consumer.

Today, the nation enjoys an all-time record rate of homeownership. While many factors have contributed to this record of success, one of the principal factors has been the rise of wholesale lending through mortgage brokers. Mortgage brokers have brought consumers more choices in loan programs and products than they can obtain from a branch office of even the largest national retail lender. Brokers also offer consumers superior expertise and assistance in getting through the tedious and complicated loan process, often finding loans for borrower that may have been turned down by other lenders. Meanwhile, mortgage brokers offer lenders a far less expensive alternative for nationwide product distribution without huge investments in "brick and mortar."

In light of these realities, it is no surprise that consumers have increasingly turned to mortgage brokers. Today, mortgage brokers originate more than sixty percent of all residential mortgages. The rise of the mortgage broker has been accompanied by a decline in mortgage interest rates and closing costs, an increase in the homeownership rate, and an explosion in the number of mortgage products available to consumers. These positive developments are not mere coincidences. They

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would not have been possible without the advent of wholesale lending through mortgage brokers. NAMB and its members are proud of the foregoing record of accomplishment and our contribution toward consumers' greater access to mortgage finance and homeownership opportunity.

While not all mortgage brokers utilize telemarketing, some mortgage brokers utilize telemarketing as a means for increasing business. Some mortgage brokers utilize telemarketing companies while other mortgage brokers conduct their own telemarketing. Mortgage brokers telemarket their services not only to consumers they have previous relationships with but with other potential consumers. As such, NAMB is concerned that any amendments to the current rules implementing the TCPA will adversely impact a mortgage broker's ability to utilize telemarketing as a marketing tool. Further, NAMB is concerned that any amendments or clarification to the existing rules could create an undue burden on small business, as the vast majority of mortgage brokers qualify as small businesses.

II. National Do-Not Call List

The FCC requests whether it should require a national do-not-call list. Although the FCC recognizes that the Federal Trade Commission has issued a proposed rule regarding a national do-not-call list (which proposed rule has not yet been finalized), the FCC recognizes that certain entities would not fall under the jurisdiction of the FTC. The FCC questions whether it should adopt a similar requirement to cover those entities that do not fall within the jurisdiction of the FTC. NAMB expresses concern that a national do-not call list would be extremely costly to maintain, would be cumbersome for those mortgage brokers operating on a regional basis and could conflict with state-required do-not-call lists.

The vast majority of mortgage brokers are small businesses. As stated in the Proposed Rule, the Small Business Act states that "a small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration." The Small Business Association defines "small businesses" for "loan brokers" as being those with \$5 million in annual receipts.¹ The vast majority of mortgage brokers fall within this definition. Mortgage broker companies typically have no more than five employees. For small businesses, such as mortgage brokers, a national do-not-call list will still be very expensive to maintain.

Not only are most mortgage brokers small businesses but most operate regionally or on a more local basis. A national do-not-call database would be cumbersome for those mortgage brokers to utilize. A mortgage broker would be forced to weed through hundreds of thousands or perhaps millions of names to find those which they are calling. As stated in the Proposed Rule, the FCC concluded in 1992 "that a national database would be costly and difficult to establish and maintain in a reasonably accurate form." Further, the Proposed Rule states "the Commission found that frequent updates would be required, regional telemarketers would be forced to purchase a national database, costs might be passed on to consumers, and the information compiled would present problems in protecting consumer privacy." NAMB agrees with these initial conclusions and believes that the FCC's initial conclusions are still relevant today.

¹ 13 C.F.R. § 121.201

Further, as recognized in the Proposed Rule, many states require the maintenance of do-not-call lists. If a national do-not-call list is instituted, a company may have to utilize their own internal do-not-call list, a state required do-not-call list, and the national do-not-call list. This would be an extremely cumbersome and expensive undertaking for a mortgage broker.

Company specific do-not-call lists serve their purpose today. Each mortgage broker company who engages in telemarketing is required to comply with current federal and state required rules on telemarketing. Company-specific do-not-call lists are to be maintained. This provides consumers the opportunity to eliminate telemarketing calls by particular companies while still creating the opportunity for a consumer to receive specific telemarketing calls (such as offers of refinancing a mortgage loan). Again, a national do-not-call list would disproportionately impact small businesses who operate regionally.

111. Maintain the "Established Business Relationship" Exemption

The rules implementing the TCPA currently maintain an exemption from certain telemarketing restrictions for an "established business relationship." An "established business relationship" is defined as "a prior or existing relationship formed by a voluntary two-way communication between a person and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such entity, which relationship has not been previously terminated by either party." The "established business relationship" allows companies, who have already "transacted business" with a consumer, and that relationship has not been terminated, certain latitude in areas of telemarketing. This appears to be based upon the concept that if a consumer has interacted with an entity in the past, they would be open to doing so again.

Mortgage brokers often telemarket their services to customers who they have worked with in the past. Many mortgage brokers may call these consumers when the interest rates drop to determine if these customers would consider refinancing their mortgage loan. This provides a valuable service to consumers who might be unaware of current interest rates or the difference a refinancing could make in their monthly payments and overall expenditure. Eliminating or restricting this exemption could prevent a consumer from being notified of these considerations. Further, it could detrimentally restrict an entity's ability to obtain future business from past customers. NAMB urges the FCC to maintain this exemption.

IV. Maintain Current Restrictions

The FCC states that advances in technology may require additional protections for consumers from invasive telemarketing activities. However, advances have been made in technology that also provide consumers with the ability to stop or avoid telemarketing calls. Caller identification is widely available for consumers to identify telemarketing calls. Also, there are devices that can block telemarketing calls, allowing a consumer to avoid these calls. The necessity for additional protections or restrictions may be minimal. These devices should be considered.

Further, NAMR is hesitant to endorse any additional restrictions or amendments to the current rules implementing the TCPA until any final rule is published by the FTC (in connection with their proposed amendments to its Telemarketing Sales Rule that might impact NAMB members). NAMB is also concerned that any additional restrictions or amendments to the rules implementing the TCPA might create difficulty in complying with state requirements as well as adversely impact their ability to advertise their services.

V. General Comments on the Proposed Rule

The Proposed Rule asks many broad-based questions on the continued effectiveness of the rules implementing the TCPA. However, these questions will obviously garner many varied opinions of whether these rules are effective or should be amended. NAMB believes that the questions posed in this Proposed Rule are so broad-based that the FCC, should it decide to amend some of the existing rules, should issue an additional proposed rule with specific amendments to the rules. This will allow concerned individuals and groups to respond to specific proposals rather than questions probing the effectiveness of certain tools or restrictions. NAMB urges the FCC, after it considers all comment letters, to issue a proposed rule with its findings that would be available for further comment from industry and consumers alike.

Further, NAMB cautions the FCC if it issues any clarifications or amendments to the current rules implementing the TCPA to consider the impact that this might have not only on small telemarketing companies but small businesses that telemarket as a secondary activity in furtherance of their primary activity.

Please note that NAMB maintains a diverse membership. Not all mortgage brokers utilize telemarketing. As such, additional information may be forthcoming from our membership as to this Proposed Rule. NAMB reserves the right to provide the FCC with additional responses to the questions posed in the Proposed Rule if more information is obtained from its membership.

* * *

We thank the FCC for the opportunity to comment on the Proposed Rule. If you have any questions about the forgoing discussion, please do not hesitate to contact NAMB's Legislative Committee Chair Neill Fendly at (480) 905-8882 or NAMB's Director of Legislative and Regulatory Affairs Stephanie Shaw at (703) 610-0205.

Sincerely,

A handwritten signature in black ink, appearing to read "Armand W. Cosenza, Jr.", written over a horizontal line.

Armand W. Cosenza, Jr., CRMS
President

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